

Administrative Law Judge John D. Clark by his Order of July 27, 1995 modified the settlement award approved by Special Administrative Law Judge James R. Roth of March 29, 1994 which, in effect, had itself modified the agreed running Award of May 1, 1992 entered by Administrative Law Judge John D. Clark. The specific issues raised by claimant upon which review is requested are as follows:

- (1) Whether the Administrative Law Judge had authority to alter an Award entered by another Judge.
- (2) Whether the Administrative Law Judge had the power to alter an Award entered more than one year prior to the respondent's motion.
- (3) Whether the Administrative Law Judge had jurisdiction to hear the motion where an action had previously been filed in district court.
- (4) What benefits is claimant entitled to receive, if any?
- (5) What penalties is claimant entitled to receive, if any?
- (6) Whether claimant is entitled to receive attorney fees pursuant to K.S.A. 44-536(g).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the briefs and arguments of the parties, the Appeals Board finds as follows:

The facts are not in dispute. Claimant agrees that they are essentially as contained in the brief of respondent and insurance carrier. They need not be repeated in detail herein. It is sufficient for purposes of this review to briefly recite the following: Claimant's workers compensation claim was settled pursuant to an agreed running Award on May 1, 1992 entered by Administrative Law Judge John D. Clark. On August 19, 1992, claimant filed a Motion to Reopen (i.e., review and modification). An agreement for a lump sum settlement was entered into between the parties. A Settlement Hearing was held March 29, 1994 before Special Administrative Law Judge James R. Roth. The respondent attorney who had actually negotiated the settlement was unable to attend the Settlement Hearing, and, in his place, sent an associate from his office. The terms of the settlement announced to the Special Administrative Law Judge were different from that which had been agreed to previously by the parties. Thereafter, following extended communication and negotiation, the discrepancy between the settlement terms agreed to versus the settlement terms which became the Award of the Special Administrative Law Judge could not be resolved. Counsel for claimant withdrew and claimant retained new counsel, who filed a petition in the district court to enforce the Award. Respondent filed a Motion for Clarification (i.e., review and modification) on July 20, 1995. On July 27, 1995 Judge Clark issued the following Order in Docket No. 147,082:

"The clear intent of the parties was to settle claims 147082 and 166593 in the lump sum of \$12,000.00 which has been paid in full. The Claimant is not entitled to any additional benefits.

"IT IS SO ORDERED."

This appeal by the claimant followed.

The Appeals Board finds the respondent's Motion for Clarification to constitute a post-award motion for review and modification of award pursuant to K.S.A. 44-528(a) which provides in part:

"The administrative law judge shall hear all competent evidence offered and if the administrative law judge finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the administrative law judge may modify such award, or reinstate a prior award, upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act."

The Appeals Board finds that the Administrative Law Judge acted within the scope of his authority pursuant to K.S.A. 44-528 when he entered his July 27, 1995 Order.

(1) An administrative law judge has the authority to review and modify an award entered by another administrative law judge. See Redgate v. City of Wichita, 17 Kan. App. 2d 253, 259-261, 836 P.2d 1205 (1992).

(2) An administrative law judge has the power to alter an award entered more than one year prior to a motion for review and modification. The six-month limitation contained in K.S.A. 44-528(d) does not apply to this case as the modification was not based upon the functional impairment or work disability having increased or diminished.

(3) An administrative law judge has the jurisdiction to hear a motion for review and modification where an action has previously been filed in district court. The Kansas Workers Compensation Act establishes its own procedures and provides the remedy for this matter.

(4) Claimant is entitled to the benefits paid which is a full, final and complete redemption of the Award.

(5) The issue before the Administrative Law Judge at the July 27, 1995 hearing concerned review and modification of the Award. The hearing was not held pursuant to an application for penalties and that issue is likewise not now before the Appeals Board.

(6) The issue of whether claimant is entitled to receive attorney fees pursuant to K.S.A. 44-536(g) was likewise not before the Administrative Law Judge and, therefore, cannot be considered by the Appeals Board upon this review. Claimant's counsel may be entitled to an attorney fee pursuant to K.S.A. 44-528; however, that issue was not argued by the parties, nor was evidence presented to the Appeals Board upon which such a determination could be made. Accordingly, that issue, if it is to be pursued, is one which should be first presented to the Administrative Law Judge for determination.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark entered in this proceeding on July 27, 1995 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James A. Cline, Wichita, KS
Vaughn Burkholder, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director